IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

FRIDAY, THE 19TH JANUARY 2007 / 29TH PAUSHA 1928

OP.No. 13245 of 2002(B)

PETITIONER:

SHYNI THOMAS, W/O. THOMAS,
KALAPURAYIL HOUSE, OTTATHAI, VELLAD AMSOM,
NADUVIL DESOM, KANNUR DISTRICT.

BY ADV. SRI.A.K.ABDUL AZEEZ

RESPONDENTS:
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1. **THE DISTRICT COLLECTOR, KANNUR.**

2. **THE REGIONAL TRANSPORT OFFICER,**
   (TAXATION OFFICER) VATAKARA.

3. **THE JOINT REGIONAL TRANSPORT OFFICER,**
   VATAKARA.

4. **THE SUB REGIONAL TRANSPORT OFFICER,**
   KOYILANDY, KOZHIKODE DISTRICT.

5. **THE SUB REGIONAL TRANSPORT OFFICER,**
   (TAXATION OFFICER) TALIPARAMBA.

BY GOVERNMENT PLEADER SRI.C.K.GOVINDAN

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 19/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.BALAKRISHNAN NAIR, J.

O.P. NO.13245 OF 2002-B

JUDGMENT

The petitioner is a contractor, providing two vehicles for transporting students of the St.Mary's Convent School, Alakode. Those vehicles are KL-11/F 8872 and KL-11/F 8861. M/s. Nishanth Thomas and P.V.Binto are respectively the registered owners of the above said vehicles. She has taken those vehicles on some lease arrangement and they are being used for the purpose of the above said educational institution. The petitioner claimed that tax could be levied for those vehicles only at the rate applicable to educational institution bus. Her claim in this regard was directed to be considered by the taxation officer, by this Court by Exts.P1 and P1(a) judgments. In the meantime, Exts.P2 demand notice was issued, claiming an amount of Rs.36,400/- + 50% additional tax for the vehicle KL-11/F 8861. Thereafter, the claim for payment of tax in respect of the above said vehicle, at the rate applicable to educational institution bus was considered and rejected by the taxation officer, by Ext.P2 proceedings dated 11.10.2001. For availing the benefit of tax at the rate applicable to educational institution bus, the petitioner has to obtain a certificate from the

District Collector. Challenging Ext.P2, she filed an appeal and thereafter O.P.No.30934/2001 was filed before this Court. This Court disposed of the said O.P with the following direction:

> "Petitioner claims waiver of tax on the basis that the vehicles are used for educational institutions only. It is for the petitioner to move the District Collector and get a certificate to that effect under SRO No.282/96 and produce the same before the authority. It is made clear that for a period of three months the petitioner's vehicles will not be detained in case the petitioner remits tax as a non-educational institution vehicle and as applicable to other vehicles. But, it is further made clear that the petitioner shall not alienate or otherwise create any encumbrance on the vehicles until the entire dispute is settled."

Thereafter, this Original Petition was filed, seeking the following reliefs:

> "(i) Issue a writ of certiorari or any other appropriate direction or order on the basis of no endorsement of tax in the R.C.
>
> (ii) Issue a writ of mandamus or any other appropriate writ, order or direction, directing the Deputy Transport Commissioner, Kozhikode to pass final orders on the appeal filed by the petitioner for getting exemption of tax for the petitioner's vehicle was off road due to no endorsement of tax in the R.C.
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> (iii) To stay all further proceeding pursuant to Exhibit P2, pending disposal of the Original Petition.
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> (iv) Issue an interim direction, directing the respondents to accept the tax at the rate of Educational Institution Bus and allow the petitioner to operate the vehicle within a time limit, pending disposal of the Original Petition.

(v) Declare that the demand as evidenced in Exts.P2 is illegal and therefore, the petitioner is entitled for exemption."

The learned counsel for the petitioner submitted that the petitioner has received certificate in her favour from the District Collector. If that be so, she may pursue her remedies before the taxation officer. As long as the petitioner does not get orders from the competent authority, permitting to pay tax at the rate applicable to educational institution buses, she is bound to pay the tax at the normal rate. Therefore, I find nothing illegal with the steps, if any, taken to recover the tax from her. If the appeal stated to be filed by the petitioner is even now pending, the Deputy Transport Commissioner, Kozhikode shall dispose of the same in accordance with law within two months from the date of production of a copy of this judgment.

Subject to the above direction, the Original Petition is dismissed.

19th January, 2007. K.BALAKRISHNAN NAIR, JUDGE.

Nm/

K.BALAKRISHNAN NAIR, J.

O.P. NO.13245/2002-B

JUDGMEMENT

19.1.2007.